

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DALE RUESCH,

Case No. 2:23-cv-00800-ART-MDC

Plaintiff,

ORDER

v.

NDOC, *et al.*,

Defendants.

Plaintiff Dale Ruesch brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at various Nevada Department of Corrections facilities. (ECF No. 5 at 1.) On November 9, 2023, this Court ordered Ruesch to file an amended complaint by January 26, 2024. (ECF No. 4.) The Court warned Ruesch] that the action could be dismissed if he failed to file an amended complaint by that deadline. (*Id.* at 9.) That deadline expired and Ruesch did not file an amended complaint, move for an extension, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy

1 favoring disposition of cases on their merits; and (5) the availability of less drastic
2 alternatives. *See In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,
3 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th
4 Cir. 1987)).

5 The first two factors, the public’s interest in expeditiously resolving this
6 litigation and the Court’s interest in managing its docket, weigh in favor of
7 dismissal of Ruesch’s claims. The third factor, risk of prejudice to defendants,
8 also weighs in favor of dismissal because a presumption of injury arises from the
9 occurrence of unreasonable delay in filing a pleading ordered by the court or
10 prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
11 1976). The fourth factor—the public policy favoring disposition of cases on their
12 merits—is greatly outweighed by the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic
14 alternatives can be used to correct the party’s failure that brought about the
15 Court’s need to consider dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,
16 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*
17 the party has disobeyed a court order does not satisfy this factor); *accord*
18 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that
19 “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted
20 pursuit of less drastic alternatives prior to disobedience of the court’s order as
21 satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
22 with the warning of dismissal for failure to comply[,]” have been “eroded” by
23 *Yourish*). Courts “need not exhaust every sanction short of dismissal before finally
24 dismissing a case, but must explore possible and meaningful alternatives.”
25 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action
26 cannot realistically proceed until and unless Ruesch files an amended complaint,
27 the only alternative is to enter a second order setting another deadline. But the
28 reality of repeating an ignored order is that it often only delays the inevitable and

squanders the Court's finite resources. The circumstances here do not indicate that this case will be an exception: there is no hint that Ruesch needs additional time or evidence that he did not receive the Court's screening order. Setting another deadline is not a meaningful alternative given these circumstances. So the fifth factor favors dismissal.

II. CONCLUSION

Having thoroughly considered these dismissal factors, the Court finds that they weigh in favor of dismissal. It is therefore ordered that this action is dismissed without prejudice based on Ruesch's failure to file an amended complaint in compliance with this Court's November 9, 2023. The Clerk of Court is directed to enter judgment accordingly and close this case. No other documents may be filed in this now-closed case. If Ruesch wishes to pursue his claims, he must file a complaint in a new case.

It is further ordered that Ruesch's application to proceed *in forma pauperis* (ECF No. 1) is denied as moot.

Dated this 20th day of February 2024.

A handwritten signature in black ink, appearing to read "Anne R. Traum", is written over a horizontal line.

ANNE R. TRAUM
UNITED STATES DISTRICT JUDGE